

7 and are therefore subject to rejoinder pending allowance of the product claims in accordance with MPEP § 821.04 and *in re* Ochiai.

Priority

The Examiner stated that based on Applicant's priority statement filed on September 3, 2002 and an inspection of the parent application USSN 09/299,708 (filed on April 26, 1999), the Examiner concluded that the subject matter defined in claims 1-6 of the instant application has an effective filing date of January 10, 2001 (the filing date of the current application). This conclusion was based on the Examiner allegation that while the prior application disclosed the nucleic acid sequence of SEQ ID NO:2 encoding the polypeptide of SEQ ID NO:1, it fails to provide a patentable utility for the claimed invention.

35 U.S.C. § 102(a) Rejection of Claims 1, 2, 4 and 5

The Examiner has maintained the rejection of claims 1, 2, 4 and 5 under 35 U.S.C. § 102(a) as anticipated by Pallavicini et al. (December 21, 2000) for the reasons of record. The Examiner stated that, for the reasons cited above, the effective filing date of the current application has been determined to be January 10, 2001, and therefore the rejection is maintained.

Applicants submit that the Examiner has presented no evidence or sound scientific reasoning to support his allegation that the claimed invention is not supported by a patentable utility in the priority application cited under U.S.C. § 120, and therefore do not acquiesce to the grounds of the rejection. However, applicants submit with this a response a declaration under 37 CFR 1.131 signed by the sole inventor on the instant application, Dr. Michael G Walker, demonstrating that the claimed invention was conceived prior to the critical date for Pallavicini et al., December 21, 2000, and was diligently reduced to practice beginning from a time prior to December 21, 2000 until the filing date of the instant application, i.e., its constructive reduction to practice on January 10, 2001. Applicants therefore submit that Pallavicini et al. do not anticipate the claimed invention as recited in claims 1, 2, 4 and 5 and request withdrawal of the rejection of these claims under 35 U.S.C. § 102(a).

35 U.S.C. § 103(a), Rejection of Claims 3 and 6

The Examiner has maintained the rejection of claims 3 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Pallavicini et al. in view of Raju (U.S. Patent No. 6,261,818, filed April 14, 1999) for the reasons of record as set forth in the previous Office Action mailed May 9, 2002.

Applicants response to the rejection of claims under 35 U.S.C. § 102(a) as being anticipated by Pallavicini et al. have been discussed above. Raju does not teach or suggest a polynucleotide encoding SEQ ID NO:1 as recited in claim 1 and dependent claims 3 and 6. Applicants submit that for there to be a proper *prima facie* case of obviousness to a claim, the reference, or combination of references must teach or suggest all the claim limitations. Since Raju does not teach or suggest a polynucleotide encoding SEQ ID NO:1, Applicants submit that there is no proper *prima facie* case of obviousness against claims 3 or 6, and withdrawal of the rejection under 35 U.S.C. § 103(a) is therefore requested.

CONCLUSION

In light of the above declaration and remarks, Applicants submit that the present application is fully in condition for allowance, and request that the Examiner withdraw the outstanding rejections. Early notice to that effect is earnestly solicited. Applicants further request that upon allowance of claims 1 and 3, that claims 7-12 be rejoined and examined as methods of use of the compositions of matter of claims 1 and 3 that depend from and are of the same scope as claims 1 and 3 in accordance with *Ochiai and Brouwer*. See MPEP § 821.04 and the Commissioner's Notice in the Official Gazette of March 26, 1996.

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact Applicants' Agent of Record, below.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. **09-0108**, as set forth in the enclosed fee transmittal letter.

Respectfully submitted,

INCYTE GENOMICS, INC.

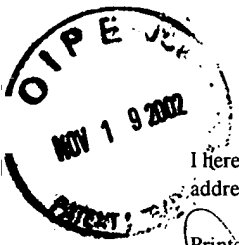
Date: November 14, 2002 David G. Streeter

David G. Streeter, Ph.D.

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PC-0025 CIP

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington DC 20231 on 11/14/02.

Printed:

By:

Margaret M. Dasso

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Michael G. Walker

Title: ANKYRIN REPEAT DOMAIN 2 PROTEIN VARIANT

Serial No.: 09/758,593

Filing Date: January 10, 2001

Examiner: Li, R.

Group Art Unit: 1646

Commissioner for Patents
Washington DC 20231

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TECH CENTER 1600/2900

DECLARATION UNDER 37 CFR 1.131

The purpose of this declaration is to establish conception combined with diligence in this application in the United States at a date prior to the earliest public availability date (December 21, 2000)) of the following prior art reference cited by the Examiner: Pallavicini et al. (GenBank Accession No. AJ304805, December 21, 2000).

I the undersigned inventor, Michael G. Walker declare and state that:

1. I am the inventor on the polynucleotide invention, claims 1, 2, 4 and 5 claimed in USSN. 09/758,593, filed in the United States Patent and Trademark Office on January 10, 2001 This application is a continuation-in-part of USSN. 09/299,708, filed on April 26, 1999

2. The invention, claimed at least in pending claims 1, 2, 4 and 5 of the above-identified application, was conceived prior to December 21, 2000, in this country.

3. The invention was diligently reduced to practice from the conception of the invention to the filing of the above-identified application, USSN.09/758,593

4. Exhibit A is a copy of pp.26 and 37 of the Sequence Listing for USSN 09/299,708, filed on April 26, 1999, showing the polynucleotide (SEQ ID NO:48) and its encoded protein, (SEQ ID NO:62) for Incyte ID No. 5578191 corresponding to SEQ ID NO:2 and SEQ ID NO:1, respectively, of the instant

application. (Please note that in this and subsequent Exhibits, technical and other information not relevant to this Declaration have been blocked out.) Exhibit A therefore shows conception of the claimed invention prior to the critical date of December 21, 2000. Following conception, the claimed invention was diligently reduced to practice, as detailed below.

5. Exhibit B is a copy of a docket sheet, dated November 9, 2000, documenting the assignment of a docket number to the above-identified application in anticipation of filing. It is standard practice at Incyte that assignment of a docket number occurs concurrently with drafting and preparation of the application.

6. Exhibit C is a database printout dated December 4, 2000 showing the Tissue distribution analysis for SEQ ID NO:2 from the LIFESEQ database, data that was used to generate Figure 3A of the specification.


7. Exhibit D is a database printout also dated December 4, 2000 showing the expression of SEQ ID NO:2 in tissue libraries from the musculoskeletal system in the LIFESEQ database, data that was used to generate Figure 3B of the specification.

8. Exhibit E is a copy of the Official Filing Receipt indicating that the above-identified application was filed with the U.S.P.T.O. on January 10, 2001.

8. The above Exhibits demonstrate conception of the present invention prior to the critical date of December 21, 2000. Additionally, the above Exhibits show diligence in reducing the present invention to practice from prior to December 21, 2000, until the filing date of the above-identified application, i.e., the constructive reduction to practice on January 10, 2001.

9. The undersigned further declares that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true, and that these statement were made with the knowledge that willful false statements and the like so made are punishable by fine, imprisonment, and/or both under Section 1001 of Title 18 of the United States Code, and that such willful false statement may jeopardize the validity of any application or patent issued thereon.

Date: 12 Nov '02



Michael G. Walker
1050 Borregas Avenue #80
Sunnyvale, California 94089

PB-0009 US

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PB-0009 US

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Incyte Genomics Document Profile	
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Application	WORDPERFECT
Author	CEDWARDS
Entered By	CEDWARDS
Document Type	APP
Client	00000
Matter	000
Area of Law	Patent
Storage Type	Keep
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Doc# 68794	
WordPerfect	
Carla Edwards	
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Patent Application	
Incyte Genomics, Inc.	
General	
Document Description	
application as filed 1/10/01 - spinoff from	
PB-0009 US 4/26/00	
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Gene Detail



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Gene Information

Gene ID: 337941 Template Count: 2 Seq Count: 70 Clone Count: 52 Verified Reagent: Y
Top Hit ID: g5420272 Hit Species: Mus musculus
Hit Type: Homolog E-Value: 2.0e-41 Pct ID: 43

Gene Description: skeletal muscle and cardiac protein

Genomic Data

Templates

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Submit template IDs to BLAST2

Protein Function

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Tissue Distribution

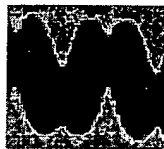
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Requested by: LG051_092000_GOLD_RO on Mon Dec 04 10:22:59 2000



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Library Distribution



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Template ID: 337941.1

Template Description: skeletal muscle and cardiac protein

Tissue Category: Musculoskeletal System

F und in:

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				Abund	Spec
<u>MUSCNOT10</u>	3302	muscle, gluteal, mw/clear cell SAR, 43F	11	0.3331	25.55
<u>MUSLTDT01</u>	804	muscle, thigh, mw/lipoSAR, 58M	1	0.1244	9.30
<u>MUSCNOT02</u>	2541	muscle, psoas, 12M	3	0.1181	9.20
<u>MUSLNOT01</u>	3306	muscle, tibial, aw/thrombosis, 41F	2	0.0605	4.84
<u>MUSLTDR02</u>	4002	muscle, thigh, mw/lipoSAR, 58M, RP	2	0.0500	4.03
<u>MUSCNOM01</u>	2716	muscle, skeletal, mw/malignant hyperthermia, WM/WM	1	0.0368	2.94
<u>MUSCDIN06</u>	3043	muscle, thigh, ALS, 74F, NORM	1	0.0329	2.64
<u>MUSCDMT01</u>	3137	muscle, calf, mw/gangrene, aw/atherosclerosis, 67M	1	0.0319	2.56
<u>MUSCDIT06</u>	3192	muscle, skeletal, aw/Krabbe, 11MF	1	0.0313	2.52
<u>MUSCNOT07</u>	6491	muscle, forearm, mw/intramascular hemangioma 38F	1	0.0154	1.25

Not found in:

Library ID	Clone Count	Library Description
<u>BONENOP01</u>	389	bone, aw/cancer, TIGR
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<u>BONETUP02</u>	3244	bone tumor, mets prostate cancer, M, 3' CGAP
<u>BONEUNR01</u>	1960	bone tumor/line, MG-63, osteoSAR/giant cell, M/F, pool, RP
<u>BONEUNT01</u>	6068	osteogenic tumor line, Saos-2, SAR, 11F, untreated
<u>BONFTXT01</u>	862	bone, trabecula/femoral neck, 66M, t/DEXA, BMP-2-48hr
<u>BONMTUE02</u>	1753	bone tumor, sacrum, giant cell tumor, 18F, 5RP
<u>BONRFEC01</u>	5401	bone, rib, aw/Patau's, fetal, 20wM, lg cDNA

http://submit.incyte.com/cgi-bin/LifeSeqGold/LG_LibDist?SeqSource=LG&SeqID=337941.1&SeqVersion=1&schemaOwner=LG051_092000_GOLD&TisCat=317

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<u>BONRFET03</u>	3852	bone, ribs, aw/Patau's, fetal, 20wM
<u>BONRNOT01</u>	974	bone, rib, aw/Paget-Schroetter, 57M
<u>BONRTUT01</u>	3511	bone tumor, rib, mets osteoSar, 16M
<u>BONSTUT01</u>	3763	bone tumor, sacrum, giant cell tumor, 18F
<u>BONTST01</u>	3238	tibia, periosteum, mw/osteosar, osteogenesis imperfecta, 20M
<u>CARCTXT01</u>	1553	probable cartilage, knee, chondrocytes, M/F, t/IL-1
<u>CARCTXT02</u>	3597	cartilage, knee, chondrocytes, M/F, t/IL-1
<u>CARGDIT01</u>	7235	cartilage, OA
<u>CARGDIT02</u>	3440	cartilage, OA, M/F
<u>CARGNOT01</u>	2013	cartilage, M/F
<u>FIBRUNT02</u>	9319	bone tumor line, MG-63, osteoSar, 14M, untreated
<u>MENTNOT01</u>	4105	meniscus, tibial, aw/mets alveolar rhabdomyoSar, 16M
<u>MUSCNOT01</u>	2176	muscle, skeletal
<u>MUSCNOT11</u>	3735	muscle, arm, ALS, 74F
<u>MUSCTUP02</u>	206	muscle tumor, alveolar rhabdomyoSar, CGAP
<u>MUSCTUP03</u>	3963	muscle tumor, striated, alveolar rhabdomyoSar, 3'/5' CGAP
<u>MUSLNOP01</u>	2709	muscle, skeletal, leg, 19F, GEXP
<u>MUSLTDT02</u>	816	muscle, thigh, aw/lipoSar, 64F
<u>SYNODIN02</u>	2575	synovium, rheuA, 75M/56F, pool, NORM
<u>SYNONOT01</u>	4052	synovium, 75M
<u>SYNOOAT01</u>	5694	synovium, knee, OA, 82F
<u>SYNORAB01</u>	5140	synovium, hip, rheuA, 68F
<u>SYNORAT01</u>	2419	synovium, elbow, rheuA, 51F
<u>SYNORAT03</u>	5814	synovium, wrist, rheuA, 56F
<u>SYNORAT04</u>	5665	synovium, wrist, rheuA, 62F
<u>SYNORAT05</u>	3468	synovium, knee, rheuA, 62F
<u>SYNOTUP02</u>	583	synovial tumor, SAR, 3' CGAP
<u>SYNWDIT01</u>	3232	synovium, wrist, dorsal, rheuA, 64F

Requested by: LG051_092000_GOLD_RO on Mon Dec 04 10:26:45 2000



IncyteGenomics



UNITED STATES PATENT AND TRADEMARK OFFICE

SEP - 4 2002

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO.	DRAWINGS	TOT CLAIMS	IND CLAIMS
09/758,593	01/10/2001	1646	840	PC-0025 CIP	12	20	3

27904
INCYTE GENOMICS, INC.
3160 PORTER DRIVE
PALO ALTO, CA 94304CONFIRMATION NO. 9627
CORRECTED FILING RECEIPT

OC000000008682568

Date Mailed: 08/26/2002

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Michael G. Walker, Sunnyvale, CA;

Domestic Priority data as claimed by applicant

THIS APPLICATION IS A CIP OF 09/299,708 04/26/1999 ABN

Foreign Applications

If Required, Foreign Filing License Granted 03/28/2001

Projected Publication Date: 07/11/2002

Non-Publication Request: No

Early Publication Request: No

Title

Ankyrin repeat domain 2 protein variant

Preliminary Class

435